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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

TAWFIK, SAMEH

ART UNIT PAPER NUMBER

3721

DATE MAILED: 12/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/942,254

Applicant(s)

WIEDEMANN, ULRICH

Examiner

Sameh H. Tawfik

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 19-23,25,26 and 31-43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19,23,31,35,37 and 41 is/are rejected.
- 7) ☒ Claim(s) 20-22,25,26,32-34,36,38-40,42 and 43 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 16.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 19, 23, 31, 35, 37, and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pesente (5,012,727) in view of Wijts (4,773,321).

Pesente discloses a product pasteurizing section comprising a plurality of spray (3-6) being configured to be disposed above the containers to permit spraying of containers from above the containers (Fig. 1); the plurality of spray arrangements comprising a first spray arrangements (3) to receive containers from the inlet arrangement (Fig. 1) and to be disposed to heat the beverage in containers with a first heated spray of liquid having a predetermined first temperature to bring the beverage in containers to a temperature below the pasteurization temperature of the beverage (column 2, lines 43-45); a second spray arrangements (4) being configured to stabilize the beverage in containers with a second heated spray liquid having a predetermined second temperature (column 2, lines 50-55); a third spray arrangements (5) to cool the beverage in containers and bring the beverage in containers to a temperature below the second temperature (column 3, lines 1-4); discharge containers through the outlet (Fig. 1). Pesente does not disclose a housing comprising a roof arrangement nor the roof being configured to receive the plurality of spray arrangements. However, Wijts discloses a similar product stabilizing section comprising a housing comprising a roof arrangement and the roof being

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configured to receive the plurality of spray arrangements disposed integrally in the roof arrangement and comprises a single cover arrangement and disposed above the plurality of spray arrangements and configured to cover substantially all of the spray arrangements; the roof arrangements has a length and width (Figs. 1 and 2; via chamber 18), note that the examiner consider only the spraying section inside chamber 18 as spraying means.

Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Pesente's stabilizing section by having a housing comprising a roof arrangement and the roof being configured to receive the plurality of spray arrangements comprises a single cover arrangement and disposed above the plurality of spray arrangements and configured to cover substantially all of the spray arrangements; the roof arrangements has a length and width, as suggested by Wijts, in order to product the stabilizing section from the outside atmosphere.

Allowable Subject Matter

Claims 20-22, 25, 26, 32-34, 36, 38-40, 42, and 43 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed 10/24/2003 have been fully considered but they are not persuasive.

Applicant argues in page 26 of the arguments that the amended claim 19 recites "a housing comprising a roof arrangement" and "a plurality of spray arrangements being disposed integrally in said roof arrangement." Wijts shows an enclosed cylindrical housing with pipe

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structures that release a fluid to sterilize the products and these pipes structures are not disposed integrally in the cylindrical housing 18. The examiner agrees with the applicant that Wijts's discloses a cylindrical housing, but the examiner also believes that the cylindrical housing 18 at the highest point can be considered as roof portion for the spraying arrangements 18a, 18b, and 18c, which disposed integrally in the roof arrangement. Note that the examiner consider only the spraying portions as a spray arrangements not the pipes.

The applicants further argue in pages 27-34 that Wijts reference is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, although Wijts reference discloses sterilization of a food product and Pesente's reference discloses apparatus for pasteurization of a food product, but both references are related to food products art and in specific to techniques of killing germs in the food products either by sterilization or pasteurization via using different temperatures.

Further applicant argue that the examiner does not point out any passage in the Pesent reference which would indicate the desirability of adopting the cylindrical housing of the sterilization system of Wijts in the pasteurization system of Pesent likewise, in the Wijts reference which would indicate the desirability, or the utility of using the cylindrical housing for the sterilization system in the pasteurization system. The examiner agrees with the applicant that no passage was disclosed in either references for motivations to combine, but the examiner as set forth in the action pointed out to a motivation and reason to modify Pesente with Wijts in order

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to product the stabilizing section from the outside atmosphere. Moreover, the examiner believes that it is obvious and well known to ordinary skilled in the art by modifying any pasteurizing and/or sterilizing stations with housing to product the stabilizing section from the outside atmosphere.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sameh H. Tawfik whose telephone number is (703) 308-2809. The examiner can normally be reached on Tuesday - Friday from 8:00 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on (703) 308-2187. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

ST.


Rinaldi I. Rada
Supervisory Patent Examiner
Group 3700